Supreme Court, U.S.
FILED
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CLERK

(2)

NO. 95-1385

**IN THE
SUPREME COURT
OF THE
UNITED STATES**

OCTOBER TERM, 1995

TANA WOOD, ALAN WALTER, GARY EDWARDS, JULIUS VAN SKIKE, WAYNE HELGESON, TERRENCE LAWSON, RICH ALT,

Petitioners,

v.

NORMAN GOTCHER, JR.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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The respondent, Norman Gotcher, Jr. respectfully requests that the Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's decision in this case. That opinion is reported at 66 F.3d 1097 (1995).

STATEMENT OF THE CASE

A. The Washington Disciplinary System And Good Conduct Time

The Petition does not directly acknowledge a crucial characteristic of the Washington State prison "good time" regulations reviewed by the Ninth Circuit: Under those regulations Washington prisoners who are not found guilty of serious misconduct at a prison disciplinary hearing are entitled to "good conduct time" sentence reductions. The Ninth Circuit, in a passage that the State does not contest here, accurately described the Washington good conduct time system:

> Pursuant to Washington's Sentencing Reform Act (SRA), inmates can earn an early release date through an earned early release program comprised of "earned time," *see* WAC [Washington Administrative Code] § 137-28-006(5), and "good conduct time credits," *see* WAC § 137-28-006(6). "Good conduct time credits," which are at issue here, are defined as that portion of an inmate's potential sentence reduction gained by not receiving a "serious infraction." WAC § 137-28-006(6); *see also* DOC Policy No. 350.130 (defining "Good Conduct Time" as "[t]hat portion of time which an offender is eligible to earn by behaving pro-socially, i.e. not receiving serious infractions"). Thus, inmates who do not commit serious infractions are entitled to good conduct time credits, which can constitute 10 days credit for every 30 days served. *See* DOC Policy No. 350.130.
>
> These provisions were developed in response to Revised Code of Washington (RCW) § 72.09.130, which provides that the DOC "shall adopt" a system providing incentives for good conduct. Pursuant to RCW § 72.09.130, the good conduct time credit program "shall be fair, measurable, and understandable to offenders, staff, and the public."

Gotcher v. Wood, 66 F. 3d 1097, 1099 (9th Cir. 1995)(emphasis added). [1]

The petitioners' statement that a Washington prison superintendent is unilaterally "free to define additional types of misconduct, beyond serious and general, sanctionable with loss of good time credits..." (Petition at 4 - 5) is simply incorrect. The Washington Administrative Code rule the State cites makes this clear, as it states only that the superintendent may, upon written approval of the Department of Corrections central office, create new general or serious infractions, reclassify infractions from serious to general, or create new sanctions.[2] This does not change the overriding rule that good conduct time credits will be granted in the absence of

---

[1]The Petition asserts that good conduct time could be denied on the last day before release, but prefaces this with "[I]f the disciplinary code has been violated." Petition at 4. However, it is not any disciplinary violation that can lead to a failure to gain good conduct time, but only a violation of the portion of the code defining "serious" misconduct that can have this consequence. And of course, this means that if there has not been a finding of guilt of a serious infraction, good conduct time must be granted. Thus, the State's assertion that "Prisoners who may have accrued good-time credits may not rely on those credits for an early release" (Petition at 4) is only true if the prisoner has been found guilty of a serious infraction. If he or she has not, he or she can rely on getting the good conduct time credits.

The Petition at 4 also speculates about what the Washington Department of Corrections might do to amend its rules regarding discipline. But of course the court below decided this case based on the administrative rules in effect when the case was decided. Those rules reserved potential loss of good conduct time to proof of serious misconduct - - as defined by Washington officials -- at a disciplinary hearing.

[2] The rule states in full:

> WAC 137-28-010 Supplementary rules. The superintendent of an adult correctional institution may promulgate local supplementary rules, policies, and procedures including the creation of new general and/or serious infractions, the reclassification of general and/or serious infractions set out in these rules, and the creation of new sanctions. All such new or reclassified infractions and sanctions shall be approved in writing by the director before being put into effect.

conviction of serious misconduct. The superintendent has no power to decide that an infraction designated as other than serious will carry loss of good conduct time credits, and there was no rule or policy involved in this case in which any prison or corrections official purported to affect good conduct time except as a penalty for serious infractions.

B. The Complaint

The lower courts correctly understood Mr. Gotcher's claim under 42 U.S.C. § 1983 to explicitly include - - as acknowledged below by the State - - an attack on the constitutional adequacy of the procedures used at the prison disciplinary hearing.[3]

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[3] "He alleges that, with regard to the disciplinary hearings on these infractions, Washington Department of Correction [sic] (DOC) employees, among other things, failed to give him 24-hour advanced written notice of allegations against him and did not allow him to call witnesses or present documentary evidence in his defense." Gotcher v. Wood, 66 F.3d at 1098. See also, the district court's opinion, appendix C to the Petition, at C-2 to C-3 ("He also complains he was not afforded adequate notice of the infraction hearings, and was denied the opportunity to call witnesses on his behalf.")

The document called Second Amended Complaint With A Jury Demand, Appendix G to the Petition, should be read with another document Mr. Gotcher filed in the district court on the same day as he filed the Second Amended Complaint. This document, which is called "Memorandum Of Support To Second Amended Complaint" actually contains most of Mr. Gotcher's specific factual allegations. In the Court of Appeals, we relied on this document (without objection) as demonstrating, along with the Second Amended Complaint, the nature of the claims. The Memorandum of Support To Second Amended Complaint is reproduced as Appendix A to this Brief in Opposition, and it demonstrates at pp. A-3, A-5, A-7, A-8, A-9, A-11, and A-17 that Mr. Gotcher was explicitly attacking the procedures used at the disciplinary hearing.

Notably, the State agreed. See the State's Brief Of Defendants - Appellees in the Ninth Circuit at 2 - 3, which said, inter alia:

> Gotcher also alleged he did not receive 24 hours' notice prior to one of his prison disciplinary hearings. He also claimed that Lt. Edwards found him guilty at his infraction hearing based only on the written infraction report, without considering documentation presented by Mr. Gotcher, and without any of his requested witnesses being present. He maintained that Lt. Edwards did not indicate on the record at his hearing why his witnesses were not called.

C. Course of Proceedings

The pro se Second Amended Complaint was dismissed on a motion for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

The Ninth Circuit made three holdings, only two of which are challenged in this Court. The Ninth Circuit: held, consistently with language in this Court's decisions, that Mr. Gotcher's due process challenge to disciplinary procedures was proper in a § 1983 lawsuit; held that Washington's system of entitlement to good conduct sentence reductions absent proof of serious misconduct created, under this Court's decisions, a liberty interest; and held that Mr. Gotcher's claim that disciplinary segregation was sufficiently onerous to create a liberty interest had to be remanded for factual development. Gotcher, 66 F.3d at 1099-1101. The Petition does not challenge the third holding.

D. Mr. Gotcher's Release From Prison

Mr. Gotcher was released from prison in 1995, while this case was pending in the Court of Appeals. His release does not render his claim for damages in the § 1983 case moot, but it does mean that he could not receive any relief in this case which would shorten his prison sentence, either directly or by application of so-called "collateral estoppel" or related doctrines.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THIS CASE DOES NOT PRESENT ANY IMPORTANT ISSUE REGARDING THE RELATIONSHIP BETWEEN HABEAS CORPUS AND CLAIMS UNDER 42 U.S.C. § 1983.

The Petition first purports to raise a federal jurisdictional issue regarding the relationship between habeas corpus cases and cases filed under 42 U.S.C. § 1983. However, for the reasons given below, no important issue of this sort is presented in this case.

A. Because Mr. Gotcher Has Been Released From Confinement, No Issue Of Earlier Release Effected Through A § 1983 Lawsuit Is Presented.

Mr. Gotcher is no longer in prison. His prison term cannot be shortened no matter what the outcome of his § 1983 case. Consequently, this case presents no potential of a prisoner effectively shortening a prison term through a § 1983 suit, and therefore raises no important jurisdictional issue for this Court to decide.

B. This Court Has Again Recently Explained Why, Given That Mr. Gotcher's § 1983 Complaint Challenged The Disciplinary Procedures Used By Prison Authorities, The Ninth Circuit Was Correct In Holding That The Case Should Not Be Treated As Habeas Corpus; There Is No Meaningful Circuit Split On This Point.

The Petition is wrong to suggest that there is any need for this Court to decide whether a prisoner can bring a § 1983 claim challenging prison disciplinary procedures when one of the sanctions was a loss of good time. On the contrary, this Court very recently discussed -- for the second time -- why a prisoner can bring such a claim under § 1983.

In Heck v. Humphrey, 512 U.S. ___, 114 S. Ct. 2364 (1994), this Court found, just as the Court had found in Wolff v. McDonnell, 418 U.S. 539 (1974), that a § 1983 challenge to prison disciplinary procedures does not convert the case into habeas corpus even though loss of good time was a disciplinary sanction, because there is no necessary effect on the length of a prison term:

> ...[W]e think [Wolff] recognized a § 1983 claim for using the wrong procedures, not for reaching the wrong result (i.e., denying good-time credits). Nor is there any indication in the opinion, or any reason to believe, that using the wrong procedures necessarily vitiated the denial of good-time credits. Thus, the claim at issue in Wolff did not call into question the lawfulness of the plaintiff's continuing confinement.

114 S. Ct. at 2370 (citations omitted; first emphasis added, second by the Court).

Thus the Court in both Wolff and Heck made clear that insofar as a § 1983 case seeks damages for constitutionally inadequate procedures that led to the loss of good time, it is not a habeas case and there is no conflict with Preiser v. Rodriguez, 411 U.S. 475 (1973). Indeed, Wolff stated that even if the § 1983 complaint contained both a habeas-style claim for restoration of good time credits and a request for damages for unconstitutional procedures, the challenge to procedures and request for damages could go forward under § 1983. 418 U.S. at 554 - 555.

Because Mr. Gotcher explicitly claimed that the prison disciplinary procedures were unconstitutional and requested damages, this case hardly presents any novel or important problem after Heck. This is especially true because Mr. Gotcher has been released and cannot regain his good conduct time no matter what the outcome of the present § 1983 case. This case involves no tension between Preiser and Wolff as the state claims, and thus there is no reason for this Court to review this alleged issue.

Notably, Heck clarified the meaning of Wolff very recently and the Petition shows no split of federal circuit authority on it since Heck was decided. The Petition cites only two post-Heck Circuit decisions in an attempt to show a split. In one, the majority follows Heck's discussion regarding Wolff, while the dissent claims that despite what the Court said about Wolff in Heck, that dictum was inconsistent with the result in Heck. Armento-Bey v. Harper, 68 F.3d 215, 216 (8th Cir. 1995). The other deals not with a Wolff-type attack on disciplinary procedures but with a § 1983 challenge to the loss of a prison drug program, participation in which entitled a prisoner to certain good time credits. Best v. Kelly, 39 F.3d 328 (D.C. Cir. 1994). The court simply held, consistently with Wolff and Heck, that "the portion of the

complaint in which plaintiffs contested the loss of good time credits they would have received..." sounded in habeas corpus and must be dismissed. Id. at 330. These cases show no post-Heck split on the viability of Mr. Gotcher's due process challenge to disciplinary procedures.

Given the recent reiteration in Heck of the viability of Wolff-type claims under § 1983, any alleged pre-Heck circuit split would not be important now. In any event, the State's claim that there was a serious split before Heck is exaggerated. The State cites only three pre-Heck cases which it can muster on its side of the claimed split, see Petition at 15 - 17. One, Leonard v. Hammond, 804 F.2d 838 (4th Cir. 1986) is not relevant, as it involved a direct attack on imprisonment for civil contempt. Another, Offet v. Solem, 823 F.2d 1256 (8th Cir. 1987) has not survived Heck in its own circuit: Offet asserts that there is no distinction between attacking length of sentence directly and attacking procedures, but as Heck showed, and as the Eighth Circuit itself recognized after Heck in Armento-Bey v. Harper (discussed above), this was an incorrect reading of Wolff and Preiser. The third, Serio v. Members of Louisiana State Board Of Pardons, 821 F.2d 1112 (5th Cir. 1987) involved parole board procedures and not prison disciplinary hearings, but does contain dicta that could require exhaustion of state remedies even when attacking prison disciplinary practices. Id. at 1118.

Thus there survives at most pre-Heck dicta in one circuit case cited by the State that runs contrary to the meaning of Wolff that has since been made clear in Heck. This hardly demonstrates a significant or meaningful split of circuit authority.

There is no reason, let alone a compelling one, for this Court to grant certiorari on the first issue posed in the Petition.

II. THIS COURT SHOULD NOT GRANT CERTIORARI TO PARSE THE STATE OF WASHINGTON'S DESIGNATION OF WHAT IS SERIOUS PRISONER MISCONDUCT.

The State tries in the Petition to suggest that there is also an important due process question in this case after Sandin v. Conner, ___ U.S. ___, 115 S.Ct. 2293 (1995). However, there is no such issue presented because the opinion below is fully consistent with the letter of Sandin.

A. The State Ignores The Portion of **Sandin v. Conner** Relevant To This Case.

The Ninth Circuit in this case made a simple, straightforward, correct ruling: Washington prison regulations hold that good conduct time sentence reductions will be granted unless a prisoner is found guilty of serious misconduct at a prison disciplinary hearing; the Nebraska good time system this Court found to implicate federal due process protections in Wolff v. McDonnell likewise limited loss of good time to proof that a prisoner was guilty of serious misconduct; this holding of Wolff is still good law as explicitly stated in Sandin [4]; therefore federal due process protections are implicated by the Washington system. Gotcher v. Wood, 66 F.3d at 1100 - 1101.

The State does not deny that the Washington system works exactly as described by the Ninth Circuit. Given that it does work this way, the Ninth Circuit's decision was compelled under Sandin's discussion of Wolff.

Moreover, the Ninth Circuit decision does not have broad implications. The Court in

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[4] See, e.g., Sandin, 115 S.Ct. at 2297 (describing the Nebraska good time system analyzed in Wolff as creating a very substantial liberty interest because it allowed loss of good time "only if the prisoner was guilty of serious misconduct..."), 2300 ("The time has come to return to the due process principles we believe were correctly established and applied in Wolff and Meachum [v. Fano, 427 U.S. 215 (1976)].").

Sandin did not make clear every incident of prison life that would be sufficiently serious to invoke the protections of the Due Process Clause, but the Court made quite clear that the kind of good time system Washington has does still rise to the level needed to invoke the Constitution. Other kinds of state good time systems might or might not invoke the Due Process Clause, but any system that is so much like Wolff as Washington's clearly invokes constitutional procedural protections after Sandin. The Ninth Circuit merely recognized this, and so this case presents no important issue for this Court to decide.

The State ignores this obvious meaning of Sandin and instead asks this Court to read Sandin to mean that if Washington prison officials' designation of serious prisoner misconduct is different from Nebraska's designation of serious prisoner misconduct, this requires a different due process result in Washington than in Nebraska. See Petition at 22 - 23. In other words, the State wants this Court to compare in detail the Nebraska and Washington designations of serious misconduct and devise a distinction between them that would mean that federal due process protections apply to Nebraska's system that reserves loss of good time to proof of serious misconduct but not to Washington's system that reserves loss of good conduct time to proof of serious misconduct.

Thus, far from eschewing federal court interference with state discretion, the State is soliciting an essentially fact-bound inquiry into the states' own judgments about what constitutes serious prisoner misconduct. The Ninth Circuit's decision does not interfere with how the states choose to define serious misconduct or set up their good time systems. This Court sits neither to determine such questions nor to save the states from their own decisions about what is serious enough to require loss of good time. There is thus no arguable basis for certiorari on the second

question posed in the Petition.

B. The Court Of Appeals Reversed A 12(b)(6) Dismissal And Remanded For Further Proceedings, Leaving The Case In A Preliminary Posture.

The Court of Appeals was careful to point out that it was reviewing the dismissal of a pro se complaint under Fed.Rule of Civ. Proc. 12(b)(6). Gotcher, 66 F.3d at 1098-1099. There has been no determination whether state officials did or did not follow proper procedures at the disciplinary hearing. In addition, in a ruling on which the State does not seek review here, the Court of Appeals held that the record was not complete enough to determine, in light of Sandin, whether the disciplinary segregation Mr. Gotcher also received as a sanction was a significant enough deprivation to trigger federal due process protections. Id. at 1101. Thus the case is in a preliminary posture, and the State's attempts to seek review are premature.

C. The Regulations Construed By The Ninth Circuit To Find A Liberty Interest Have Been Superseded.

The prison disciplinary regulations currently in effect in Washington are different from those that were in effect at the time of Mr. Gotcher's disciplinary hearings. The differences are set forth in the margin.[5] The Ninth Circuit, of course, decided the case under the regulations

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[5] With respect to the regulations specifically referred to in the Ninth Circuit opinion, the following changes have been made:

a. Former WAC § 137-28-006 (6) provided as follows:

> "Good-conduct time credits" means that portion of an inmate's potential reduction to his/her minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which is gained by not receiving serious infractions as listed in WAC 137-28-030.

This section has been repealed and replaced by WAC 137-28-160, which provides in pertinent part:

> Good conduct time credits - that portion of an inmate's

in effect at the time of the hearings. Although we do not concede that the changes in the regulations would change the result in a new case under the new regulations, the recent changes would limit the value of any decision by this Court under the old regulations.

CONCLUSION

For the foregoing reasons, the Petition For Writ Of Certiorari should be denied.

Respectfully submitted this 29th day of March, 1996.

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potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

b. Former WAC 137-28-005(1) provided:

> The rules in this chapter shall provide a standardized system consistent with constitutional due process for ascertaining whether misconduct by an inmate of an adult correctional institution has occurred.

This section has been repealed and replaced with WAC 137-28-140, which provides:

> The rules in this chapter provide a standardized system to determine whether misconduct by an inmate of an adult correctional institution has occurred.
>
> The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board or the division of community corrections.
>
> The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

APPENDIX A

[FILED]
[August 24, 1993]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NORMAN GOTCHER JR., Plaintiff, V. TANA WOOD, WAYNE HELGESON ALAN WALTER, JULIUS VAN SKIKE, Lt. G. EDWARDS, RICK ALT, Lt. LAWSON Defendants.	NO. CS-93-0120-FVS MEMORANDUM OF SUPPORT TO SECOND AMENDED COMPLAINT

CIVIL RIGHTS COMPLAINT
WITH A JURY DEMAND

This is a Civil Rights Action under 42 U.S. § 1983 Filed by NORMAN GOTCHER JR., A State Prisoner, alleging Violation of His Constitutional Rights and Seeking Money - Damages, Declaratory Judgment, and Injunctive Relief. Plaintiff - Requests a Trial by Jury.

JURISDICTION

1. This is a Civil Rights Action, Under 42 U.S.C. § 1983. This Court has Jurisdict under 28 U.S.C. 1331 § and 1343. Plaintiff also invokes the Pentent Jurisdiction of this Court.

VENUE

2. Venue is proper in this Court Pursuant to 28 U.S.C. 1391 (b). The Claims Set Fo in this Complaint Occurred in Connell Wash,

at Coyote Ridge Camp, And also at Walla Walla State Penitentiary, In Walla Walla: Wash. Eastern District.

PARTIES

(a). Plaintiff, NORMAN GOTCHER JR., Is presently incarcerated at Washington State Penitentiary, Walla Walla (W.S.P.).

(b). Defendant - TANA WOOD - Superintendent of Walla Walla State Penitentiary (W.S.P.)

(c). Defendant - WAYNE HELGESON - Associate Superintendent of Walla Walla State Penitentiary (W.S.P.)

(d). Defendant - ALAN WALTER - M.S.C. Baker Unit Counselor of Walla Walla State Penitentiary (W.S.P.)

(e). Defendant - RICK ALT - Of M.S.C. Building as a Committee Classification Member of Walla Walla State Penitentiary (W.S.P.)

(f). Defendant - JULIUS VAN SKIKE - M.S.C. CCIII Review Committee Chairperson for Classification Hearings of Walla Walla State Penitentiary (W.S.P.)

(g). Defendant - Lt. G. EDWARDS - Of M.S.C. Building as a Major Hearings Officer.

(h). Defendant - Lt. LAWSON - Of M.S.C. Building as a Committee Classification Member of Walla Walla State Penitentiary (W.S.P.)

The Name's From B-H Caused and Personally Participated in Causing the alleged deprivation of Plaintiff's Constitutional Right's.

Each party is Guilty of Violating Plaintiff's Equal Protection which Guarantee's Plaintiff's Due Process Rights to the Fifth Amendment of the United States Constitution's, State And Federal.

FACT'S

"STATE AND FEDERAL CASES, AND DOC WAC RULE'S AND POLICIE'S" SUPPORTING MY CLAIMS UNDER NO. CS-93-0120-FVS.

All partie's under No. CS-93-0120-FVS caused the deprivation of plaintiff's Constitutional Rights.

(A). On 10-13-92 Alan Walter, Confronted Plaintiff to making an override to the 506, Setting the Classification Hearing for 10-14-92 without any allegation's or document's to the charge against plaintiff to be true.

(B). On 10-13-92 Lt. G. Edward's Hearing Lt. Held plaintiff Major Hearing the same day without any 24 hr Advance Notice, Statement's, Docment's, Witnesse's and Defendant's, Requested by Plaintiff before the Hearing took place.

(C). On 10-14-92 Alan Walter, Rick Alt, Julius Van Skike, And Lt. Lawson, Made their Judgment to close my Custody, Take all my point's, and ship plaintiff away from M.S.C. Building without making their strick decision apart of Administrative Record's, And Deprived plaintiff of a Fair and Factual Classification Hearing by the DOC WAC's 137-28-085, And 137-28-075 Rule's.

(D). On 10-15-92 Plaintiff Appealed to Tana Wood; She responded, Heard Plaintiff Appeal, Then made Her own Judgment to Deny Plaintiff Appeal from the Rule's She Set Forth in DOC's Policie's, and WAC Rule's 304.00, 304.10, and 305.40, and WAC 137-28-075, 137-28-085.

(E). Assoc, Supt. Wayne Helgeson - Also on 10-15-92 Denied

Plaintiff Appeal, and took part to the Classification by dening plaintiff the Due Process and Equal Protection Clause

(F). On 12-18-92 Plaintiff Seened Supt. Tana Wood in 8wing around 11:36 am asking Her About a Clarification through his Paralegal Richard Heath Rideout And to Afford Him the proper treatment of justice as so other's with Evidence and Fact's.

(G). Tana Wood's Disregarded this, and sent plaintiff Her Memorandum He Received on 1-6-93 Stating the infraction happened at Another Institution for you to Deal with that Superintndent from that institution.

(H). Yet Plaintiff was told by Alan Walter and His Committe Member's, Julies Van Skike, Lt. Lawson, and Rick Alt to Appeal His Sanction's to Tana Wood which He did, and She Hear His Appeal to make Her Decision; Because on 11-6-92 She Stated we have Reviewed your Appe and Recent Classification Action which Demoted you to Closed Custody,And this Demotion - Will Stand.

(SPECIFIC CONDUCT WAS UNCONSTITUTIONAL).

TANA WOOD - Violated Plaintiff Due Process and Equal Protection Right's by her Fals Statement's and Action's, Denied Plaintiff the DOC. WAC 137-28-075, 137-28-085, The WAC's 304.00, 304.10 and Not upholding the WAC 305.40 to Decision Making Authority of Classifiction Committee and Policie's.

She Violated Her policie's and WAC Rule's by making the Sanctions, But then afterwards inforcing Plaintiff Appeal to Another Facility that punished me twice for one Crime - Charged,

And took away Plaintiff Right's and Privledge's Etc.

Lt. G. EDWARDS - Violated Plaintiff Constitutional Right's, By denying Plaintiff, Due Process and Equal Protection under Wolff v. McDonnell 41 L.Ed.2d 935 Must Meet one of Four. And also Taylor v. Illinois Cite as 108 S.Ct. 646 (1988). By; (a). Not Advancing Plaintiff with a 24 hr Notice of Hearing. (b). Dening Plaintiff the right to call upon

CONTINUED.

Defendant's and Witnesse's (c) Dening Plaintiff the Right to Marshall the Fact's, Statement's, Allegation's, And Documents So He could prepare for His own Defense. (d). Plaintiff was Never read His Miranda Right's before going to the Hearing Once Alan Walter told Plaintiff He had a 506 write up. (e) Lt. G. Edward's told Plaintiff once starting his Hearing that He have the Right to Remain Silent that can be used against Him at the Hearing, Then made Judgment to find Plaintiff Guilty.

ALAN WALTER, JULIES VAN SKIKE, RICK ALT, Lt. LAWSON - All Violated Plaintiff Due Process and Equal Protection. (a) . Plaintiff was Denied to present relevant, Non-Cumunlative Documentary Evidence in His own Defense. (b). Neither one of the Defendant's Acted in Good Faith to insure Plaintiff was Afforded His Equal Protection Right's, By Dening Plaintiff all His Afforded Right's under the Fourteenth Amendment to the United State's Constitution. Under Wolff v McDonnell 41 L.Ed. 2d 935 Must meet One of Four, And under the WAC 137-28-085, and 137-28 075. 304.00

304.10 305.40 Rule's.

ASSOC. SUPT: WAYNE HELGESON - Violated Plaintiff Due Process and Equal Protection Right's; (a). Deprived Plaintiff the Rights of Legitmate paper work to prove His Innocense, and Denied Him the rights to gather or Marshall any Fact's, Documents, or to call upon Witnesse's to prove His Innocense, And Never stood by the DOC WAC 137-28-085/137-28-075 or the Wolf v. McDonnell case to meet one of four Standards.

TANA WOOD, WAYNE HELGESON
ALAN WALTER, Lt. G. EDWARDS
Lt. LAWSON, RICK ALT, And
JULIUS VAN SKIKE.

Has all Violated Plaintiff Due Process and Equal Protection Guaranteed by the United State's Constitution's.

TANA WOOD, And WAYNE HELGESON - Has Acted as a Quasi - Judicial Power and Has Acted as a Judicial Body, Affording their own right's to Deprive Plaintiff of Right's from one Jurisdiction to their's punishing Plaintiff to one crime charged from a diffrent Institution of a diffrent Jurisdiction, to the Dubble Jeopardy Clause that Plaintiff also feels that this is also Conspiracy that denied Him Afforded Right's from Wolff v. McDonnell 1 - 4 DOC WAC 137-28-075, 137-28-085 Etc.304.00, 304.10, 305.40 Rule's.

TANA WOOD, And WAYNE HELGESON - Has the knowledge to the Disciplinary Court Action in a Quasi Judicial Function as Stated in Black's Law Dictionary page 1245. A term Applid to the Action's, Discretion Etc. of Public Administrative Officer's or Bodie's, Who are Required to Investigate Fact's, or Ascertain the Existence of

Fact's, Hold Hearings, -- Weigh Evidence, and Draw Conclusion's from them as a Basis for their Official Action, and to Exercise Discrection of a Judicial Nature. These all were Violated by TANA WOOD, and WAYNE HELGESON; And Plaintiff was tried and Convicted by two Jurisdiction's Depriving Plaintiff to any Fair Impartial Hearing. These Cause's have not been Applied Equally or Fairly from One Institution to Another, therefore Plaintiff was Discriminated against and all Proceedure's has been Violated.

Under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)

Lt. G. EDWARDS - On 10-13-92 Told Plaintiff at the Hearing, that He had a right to Remain Silent to a possible prosecution, And that anything Plaintiff said can be used against Him. Under; 384 U.S. at 469-470.86 S.Ct. at 1625 Mathis, Supra, Applied Miranda's Reasoning to those Already in prison. It Follow's therefore, that the Miranda Soluction must be Foremost in the Mind's of prison Administrator's, They must make it quite clear to an inmate who is under threat of Criminal prosecution, that while He has a Due Process Right to speak, He is under No Compulsion to do so. If the Inmate Chooses to remain silent, He must Not be questioned Further, which also Violated Plaintiff Fifth Amendment Right's.

Again by Lt. G. Edwards there were No Explanation of a denial to Plaintiff Constitutional Right to present witnesses to be present at the time of His Disciplinary Hearing, that in No way would had or wasent Stated that it would be unduly Hazardous to

institutional Saftey or Correctional Goals Under Taylor v. Illinois Cite as 108 S.Ct.646(1988) Nor did the Record Reflect why in specifics as part of the Administrative Record for the Disciplinary Proceeding, Id., at 556,41 L.Ed 2d 935, 94 S Ct 2963, 71 Ohio ops 2d 336.

To back the Statements above, the Disciplinary Board must State it's Reasons for Refusing to call Witnesses, Whether it be for irrelevance, Lack of Necessity, or the Hazards presented in Individual Cases under 418 US, at 566, 41 L.Ed 2d 935, 94 S Ct 2963, 71 Ohio ops 2d 336.

These were unconstitutional to the Extent that they didnot require the Administrative Record to Contain reason's Supporting the Board's Denial of Plaintiff Witnesse's Requested Under Real v. Superintendent, Massachusetts Correctional institution, Walpole, 390 Mass 399, 456 NE2d 111 (1983), We granted certiorari, 469 US 814, 83 L Ed 2d 26, 105 S Ct 77 (1984)

CONTINUED.

Had they Allowed Plaintiff Witnesse's in His behalf, And to Cross Examine the Witnesses and Defendant's to find out any Racial Biasness to writting Plaintiff up or period, that Plaintiff Now Contend's the Hearing Lt. and Classification Board was within Bad Faith, And Failed to Follow the DOC, WAC Rule's - 137-28-085, 137-28-075 And the WAC 137-28-065 (2) (4).

Lt. G. Edwards Violated WAC 137-28-085 (1)(2)(a)(b)(c)(d)(f), 3,4,5,6, And Wolff v. McDonnell 1-4.

ALAN WALTER, RICK ALT
JULIUS VAN SKIKE, And
Lt. LAWSON, Committee Member's:

On 1-14-92 Has Caused a Municipal Liability under Section 1983 to Deprive Plaintiff of Right's Secured by the U.S. Constitution's, And Federal Statute's. ANd the Hearing's Conducted Deprived Plaintiff Equal Protection of the Law's, By:

(a). Not giving plaintiff the opportunity to have Access to Non-Confidential Report's and Records an Reports by the Hearing Officer during the Fact Finding Stage or before.

(b). The Board Stated reason's for this Denial were Defective, And the Decision's Departed from Board Rule's and Regulation's, and Customary Affordable for Hearing and Clalssificatio "Policie's, therefore personally singling plaintiff out for Harsher treatment and Punishment than that Accorded to Similar Situated prisoner's.

(c) The Statute of the Classification by all Member's above was inherently invidious, And did impinges on plaintiff Fundamental Rights, and on the Erea's in which the Judiciary had a Duty and Obligation within their own Jurisdiction to uphold their own policie's and Rules Not to Another Jurisdiction Depriving Plaintiff of all Afforded Equal Protection which Guarantee's plaintiff the Due Process Right's to the Fifth Amendment.

WHY?

Because Never once while plaintiff was at Coyote Ridge Camp and written up for the 506, Was He given 24 hr Advance Notice to the 506 write up, Nor was Plaintiff Advance 24 hr Waiver Notice for

Witnesses by Lt. Terry Waldher, Nor was Plaintiff Advanced any type of papers to the Charges, and Allegations against Him; the same with the Haring Officer Lt. G. Edwards at W.S.P. M.S.C. Building.

The Staff's at M.S.C. And both Supt; Tana Wood, and Assoc. Supt; Wayne Helgeson and the Major Hearing Lt. G. Edwards was outside of a Judicarary process for Holding plaintiff Hearing that came from Another Institution from Another Jurisdiction. Each party have Denied plaintiff the right of Witnesses to be present. They all Denied plaintiff the right to Confront the Defendant's who wrote the Intial write up, And Never gave plaintiff Achance to Gather Fact's for His Defense, Nor to Marshall all the Statement's, Document's, and Evidence against Him; Until He was brought to the Major Hearing at the W.S.P. M.S.C. Building. Still Never was it Stated why plaintiff couldnot Confront the Defendant's, and No specific reasoning made part of the Administrative Record for the specific Denial of Witnesses to His Defense, that in No - Way Jeopardized Institutional Safety or Correctional Goal's.

Refraiming back to page five, paragraph two; The Classification Committee Member's Never Afforded plaintiff any Right's or Priveldges as would had been to a Normal Classification Hearing, And had based their perception's on plaintiff Race and National Orgion that Isolated plaintiff from the Equal Protection by a Scheme or plan to rush plaintiff away from the Building without making any parts of the Administrative Record apart of a Institutional Security Risk, or to the Ordially Operation of the

Institution or Hazard that has Not been Stated on the Record to this Effect, or Period.

Plaintiff Equal Protection Clause of the Fourteenth Amendment Arguing also: He was Discriminated against by the Classification Review Committee for the Dispropertionlly High Level of Caucasion's in Charge, Not Affording Plaintiff any type of Right's to Prove His Innocense, Nor Acted in Good Faith Checking the Right's Afforded to Him by the United States Constitution to the Fourteenth Amendment, and Fifth Amendment Due Process, And Equal Protection and their own DOC Policie's and WAC - Rule's, thereby the Motivation Act because of His Race, Color and Natural origion was looked upon by an all Caucasion -- Committee with Disregard's to the Policie's and Law's Afforded, that has Also injured - Plaintiff by the Challenged Action's of the Defendant's and Committee Member's, Towhich the injury is indeed fairly tracable to the Committee's and Defendant's Act's or Ommissions.

In ordinary Case's, A party has No standing's to Assert the Right's of third person's Because from the Classification held, there were No Citation to Supporting Authority - the Extrajudicial knowledge by one of First impression under: Alabama Law. The Statute itself doe's require that the three person's from whom the third panel Member's is to be choosen Are to be person's "qualified..... To Render a Fair and impartial decision". Ala.Code § 36-26-105 (emphasis added). However, the Statute Contains No such qualifying Language for the party Appointed panel Member's

Under Hardy v. Birmingham BD. Of Educ. Cite as 945 F.2d 1546 (11th Cir. 1992).

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1 Plaintiff cross Examination would had given Him an option also to find out any Racial Biasness to writting Him up, If He was Afforded a Right to have Defendant's and Witnesses present, And the Judgment by the Hearing Lt. and Classification Board that Was within Bad Faith, and Failed to Follow the DOC. WAC-Rule's. (970 F.2d 588 Federal Law.

IN CLOSING.,

Under: 303.70 Plaintiff State's the Fact that referral's will be Submitted on DOC - Form -530(x), Made to a unit team Classification Committee, or Classification and Parole Supervisor, who will Review Reccomendation's for Promotion or Demotion in Custody or Change in Status. Plaintiff Contend's that this proceedure was Not Followed by the Classification Board, as well as other proceedure's Violated from one Jurisdistion to Another.

Also Plaintiff Contends that Due Process Requires that a Defendant or Plaintiff be Permitted to Officer's Testimony of Witnesses in His Defense; id., Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019 (1967).

Plaintiff Also State's that the Sixth Amendment is Merely a Guarantee that the Accuse Shall have the Power to Subpeona Witnesse's. The Witnesse's would had been Supported and Material to Plaintiff Defense, If Allowed to be there at His Major Hearing.

Westen, the Compulsory Process Clause, 73 Mich,L.Rev.71,94-95 (1974) (Footnotes Omitted).

Plaintiff Contend's that for all Violation's Stated, Plaintiff ask the Court that He be Granted and Entitled to the Relief He seek's in His Original Complaint, and from His Second Amended Complaint which Follow's:

RELIEF

A. Refrain from interfering in Plaintiff's attempt's to prove His Innocense, and Regain His Freedom.

B. Refrain from retailiating against Plaintiff in any Manner including, but not limited to, Cell Searches, Strip Searches, Confiscation of Plaintiff's Legal Work, and other Property, Isolation, Administrative Segregation, Transfer to another Corrections Facility or Camp without Plaintiff Exercising His COntistutional Right to bring this Redress of

CONTINUED

Grievances to Trial.

C. Correct Defendant's Criminal Act's against Plaintiff by Having Supt: Tana Wood Refrain against any types of Retaliation from sending any of Her Officer's to Harrass Plaintiff in any type of way's by Her Action's. Also for Tana Wood to let the Court Know that my point's has been restored after holding me for one year in Her Custody, And that I receive my other 30 Day's back for which is still at a loss.

D. Correct Defendant's Criminal Act's against Plaintiff by having

Assoc; Supt: Wayne Helgeson Refrain against any type's of Retaliation from sending any of His Officer's to Harrass Plaintiff in any type of way's by His Action's.

E. Correct Defendant's Criminal Act's against Plaintiff by having Alan Walter Refrain against any more of His Violations of Plaintiff Constitutional Rights, And that He doe's Not Harrass plaintiff in any type of way's by the Plaintif being sent back out to the MSC Building awaiting His transfer to Indian Ridge Camp. Also for Alan Walter to look at all the Facts Next time, instead of using his haitred to find a person guilty. Plus to give a person a fair classification hearing, and let that person have enough time to prove His innocense.

F. Correct Defendant's Criminal Act's against Plaintiff by having Julius Van Skike, Rick Alt, Lt. Lawson, And Lt. G. Edwards, Refrain against any more Retaliation's by their Haitred and byPlaintiff Filing this Law Suit Against them from stripping Plaintiff Constitutional Right's and punishing plaintiff by the haitred for black's in general. Also for each of them to take this ugly mess off of my Record and out of my Central File's with their Oppoligies and Damages Rendered.

1. Plaintiff ask that each party provided for the Damages, Seperately.

RELIEF CONTINUE'S

Wherefore, plaintiff NORMAN GOTCHER JR., Request this Honorable Court Grant the Following Relief:

Issue a declaratory judgement that defendants Violated the EQUAL PROTECTION which -- Guarantee's Plaintiff's DUE PROCESS RIGHTS to the FIFTH AMENDMENT of the UNITED STATES - CONSTITUTION'S, STATE And FEDERAL. And Washington State Constitution, Article 1, § 3, 42 U.S.C. § 1997d, in Violation of State and Federal Law.

1). Defendant - Tana Wood - That She Violated these Constitutions, And that Plaintiff will except by the Courts from Her the Amount of One Hundreth Fifty Thousand Dollars Forth With.

2). Defendant - Wayne Helgeson - That He has also Violated these Constitutions, And that Plaintiff will except by the Courts from Him the Amount of One Hundreth Thousand Dollars Forth With.

3). Defendant - Alan Walter - That He Violated these Constitutions, And that Plaintiff will except by the Courts from Him the Amount of Two Hundreth, Seventy Five Thousand Dollars Forth With.

4). Defendant - Rick Alt - That He Violated these Constitutions, And that Plaintiff will except by the Courts from Him the Amount of One Hundreth Thousand Dollars Forth With.

5). Defendant - Lt. Lawson - That He Violated these Constitutions, And that Plaintiff "will" except by the Courts from Him the Amount of Seventy Five Thousand Dollars, Forth With.

6). Defendant - Lt. G. Edwards - That He Violated these Constitutions, And that Plaintiff will except by the Courts from Him the Amount of Seventy Five Thousand Dollars Forth With

7). Defandant - Julius Van Skike - That He also Violated these Constitutions, And that Plaintiff will except by the Courts from Him the Amount of One Hundreth Thousand Dollars Forth With.

CONCLUSION'S TO REQUESTING RELIEF.

Plaintiff: Further States why He should be Intiltled to Requesting for Relief, Compensatory Damages,Punitive Damages Etc.

Plaintiff Further Contend's that His Substantive Rights were Violated:

A). Because of being put through so many unecessary Violations to the Constitution by Coyote Ridge Staff Members, And W.S.P. And M.S.C. Staff Members as well.

B. Plaintiff Suffer alot of pain and Emotional Distress, and Humiliation, therefore Plaintiff suffer Mental and Emotional Distress because of all the punishments, and Deprivation of being stripped of all His points, Custody, and Now the lost of Good Time, Which has caused plaintiff to be on Relaxer Medication of 100% Milligram Centerquam to get to sleep at Night. Citing under 283 Mary and Crystal v. ramsden, 635 F.2d 590,600 (7th Cir 1980); Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979); Baskin v. Parker, 602 F.2d 1205, 1209 (5th Cir. 1979).

Plaintiff was put into Segregation without adequate Notice and a Hearing; Plaintiff cannot Recover Damages for being in Segregation. And all W.S.P. And M.S.C. Staff Members and Officials had knowledge of the Activities to Plaintiff Hearing's. There were Failure by All the Mentioned parties to take Corrective Measure's

which Amounted to Deliberate Indeffrence, Violating Plaintiff my Eight Amendment Right to be Free from Cruel and Unusual Punishment. ANd the State Statute and Common Law were Violated when prison officials were Negligent in Providing Adquate Proceedure's of Law to Insuring Fair Major and Classification Hearing that didnot happen, Case citing 285 Carey v. Piphus, Supra Note 279; Seaton v. Sky Realty Co. 491 F.2d 634 (7th Cir. 1974); Powell v. Ward, 540 F. Supp. 515,517 (S.D.N.Y. 1982).

Plaintiff: NORMAN GOTCHER JR., Suffer Emotional Distress from the absence of proper proceedures, then found guilty of the Charges, then transferred to a Maximum Facility Inviroment were the air is bad, The cell ventilation is bad, the food is bad, there's over crowdingness, Exercises are limited, And plaintiff is on lock down 21 to 22 hr's a day, towhich plaintiff is limited to any type of activities period, plus plaintiff is in a very small cell amoung three other bodies which can cause serious amount of damages, and injury with the loss of more goodtime credits, the loss of more points, and custody, and of gett seriously hurt by the stress of His cell mates. Under the case of 286 Carey v. Piphus, id at 262-64

Also plaintiff contends that He is Suffering from being So-Far away from His Family in Seattle, and the fact He have to deal with these Staff's and Officer's up here who knows about everything plaintiff's trying to pursue. Also being Harass, and Dealing with the Mail System loosing His Mail, openning Legal Mail that has

happen once last Monday the 21st without His presence that Officer: Southwick is a Witness to. Plus going through Cell Searche's and Strip Search's with the taking of His personal property, throwing it away without giving plaintiff any option's for which He had to File a Tort Claim on that was in Olympia, And just being stressed out period by all these rule's here to follow; But most of all being locked up in a far away place long period's of time's in my cell without hardly any recreation time or free time out of my cell. Plus Plaintiff claims to have been loosing His hair, grinding his teeth, And Now plaintiff has a Severe Eye Damage that was caused by the W.S.P. Hospital Staff Member's that Plaintiff Now was told He'll have to live with for the rest of his life.

Towards the TRO Plaintiff is Suffering irreparably during the pendency of the Lawsuit if the Relief is Not Granted. Therefore plaintiff allege that there is No adequate remedy at Law and Future Compensation in Damages will be an insufficient remedy, and that plaintiff injuries now are of Serious Consequences to Him. Also plaintiff Due Process and Equal Protection Rights has been Violated that has caused irreparable harm, And also the diffrence in Segregation and being in population, is that in Segregation Plaintiff had No types of Activities for His Health or Mind to use. Plaintiff was Not afforded amy types of reading Materials, the food was worse, being cold before it reashes you for the facts that the prison guards had to bring it to you. You are only allowed to wear the same orange suit that is given, and only take one shower a day,

and only twenty minutes of phone time out of your cell period were as in population you have alot more movement, and activities of going to School, playing basketball, baseball, socker, jogging around the field, joing the music group, going to Church, and walking to get yourself a hot meal that you can get on your own. In Segregation all of your Life requirements are cut off, and your lefted with Nothing to do or No were to go or no one to talk too, Just left in the dark or with the lights on all Night long what ever the officer's may feel when they get to work. This is the Big Diffrence.

It is in the Public interest to grant Plaintiff a TRO of Preliminary injunction, therefore plaintiff Case Law is Stronger than the Law supporting the Defendants. However, Courts have continued to Act when overcrowding Reaches Serious proportions, especially when it is imposed for long periods of time and Accompanied by Severe Restrictions on Recreation, and out-of-cell time, by threats to Safety, or other Aggravating Conditions. This Approach is well illustrated by the Second Circuit's Decision in Lareau v. Manson 651 F.2d 96 (2d Cir.1981)

Plaintiff's hurting very deeply, And Now He's definetly using Medication from the cause of all the cruelties by Coyote Ridge Staff's and W.S.P. And M.S.C. Staff Members.

These I mentioned to the Court are the reason's that are very serious why the plaintif should be Granted a Large Amount of Compensatory Damage's, Punitive Damage's, and the Injuntive Relief,

and the Clearing of those Sanctions and written Statements against Him that's in His Central File's be Expunged and Cleared; with the transfer to Another Better Camp Facility closer to His Home and Family in Seattle.

The plaintiff aske the Court Respectfully to Serve His Claims upon all Mentioned Parties and to render the Nessarry Judgment's within the Court's discrection's the Court See's fit. I do believe since I have been already one year conduct clean and held at this cruel harsh facility, I have already earned back all of my status, except for the loss of my other 30 day's good time credits' and without any finances with all the daily effort I put into my claims, the valuable times spent, the long hours, and the Research's studied, and all the Money spent to send out legal work to the Court and refiling my claims as well.

Plaintiff also seek the cost's of being His own pro-sce Attorney, by the hour's rendered, and all that a Normal Attorney would do, but without a secretary or private investigator to help. All is done from plaintiff's own Accordance to that which best may serve him and the Court's to what is hopefully satisfiable. This is the extent of plaintif Complaint and Claim unless other wise NOted by the Court for further preperation's.

RESPECTFULLY NOTED, And SERVED

8). Also though Plaintiff dosent have Lt. Terry Waldher at the Heading of his complaint Plaintiff doe's have Lt. Terry Waldher Stated in His Second Amended Complaint, and in His Memorandum of

Support to His Amended Complaint of being the main factor to violating all the existing rule's regulation's policie's and proceedure's, and Constitutional Laws.

Therefore Defendant - Lt. Terry Waldher - Has Violated these Constitutions, And that Plaintiff willl also except by the Courts from Lt. Terry Waldher the Amount of One Million Dollars Forth With.

All the above partie's, have Violated each and every elment of these and other Constitution's That Plaintiff has Set Forth in His Second Amended Complaint, and His Memorandum of Support to His Second Amended Complaint; to Plaintiff's Equal Protection which Guarantee's Plaintiff's Due Process Rights to the Fifth Amendment of the United States Constitution's State and Federal. (Also the Eight and Sixth Amendment's as well that's an arguable subject in Plaintiff's Claim as well).

PLAINTIFF CONTEND's ALL IS TRUE AND CORRECT, EACH AND EVERY ELEMENT.

/s/_____
NORMAN GOTCHER JR. #634076/8w-A-2
Washington State Penitentiary
P. O. Box 520
Walla Walla: WA 99362

SUBSCRIBED AND SWORN to me before
this 19th day of August, 1993.
residing as a Notary Public at Walla Walla Prison.

/s/_____
NOTARY PUBLIC in and for the State of Washington

My Commission Expires: _____.